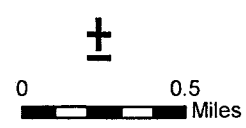


FIGURE 2.6-9
LOCAL ROUTING OPTION AND VARIATION
SOUTH OF CUT BANK



- LEGEND**
- ALT 2 - PROPOSED ALIGNMENT
 - ALT 3 - ALIGNMENT
 - ALT 4 - ALIGNMENT
 - SOUTH OF CUT BANK VARIATION
 - MAJOR HIGHWAYS
 - SECONDARY ROADS
 - SECTION LINE
 - STUDY AREA BOUNDARY

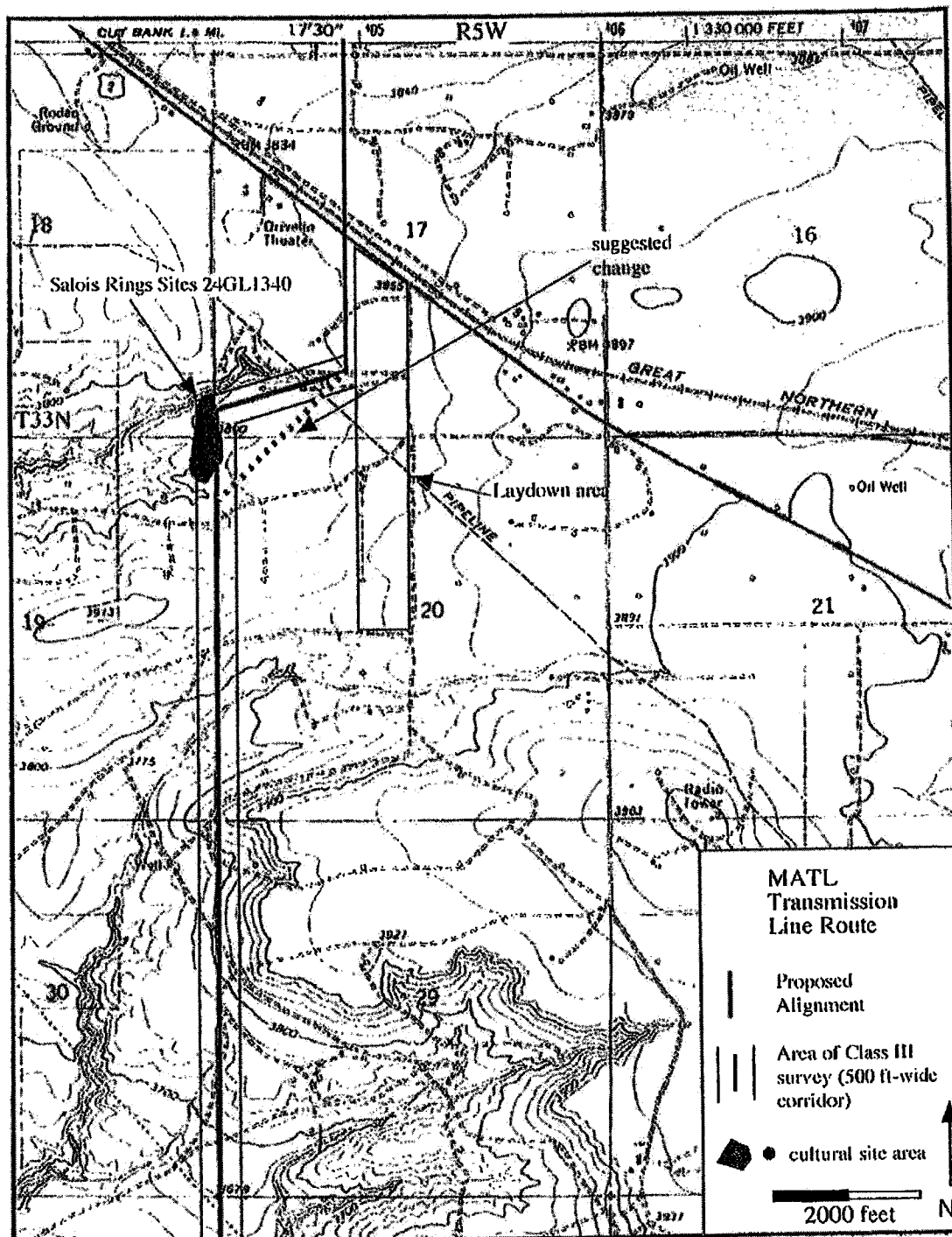


Figure 5-25. The Class III Inventory and cultural resources encountered on the USGS 7.5-minute map *Cut Bank SE* (1966).

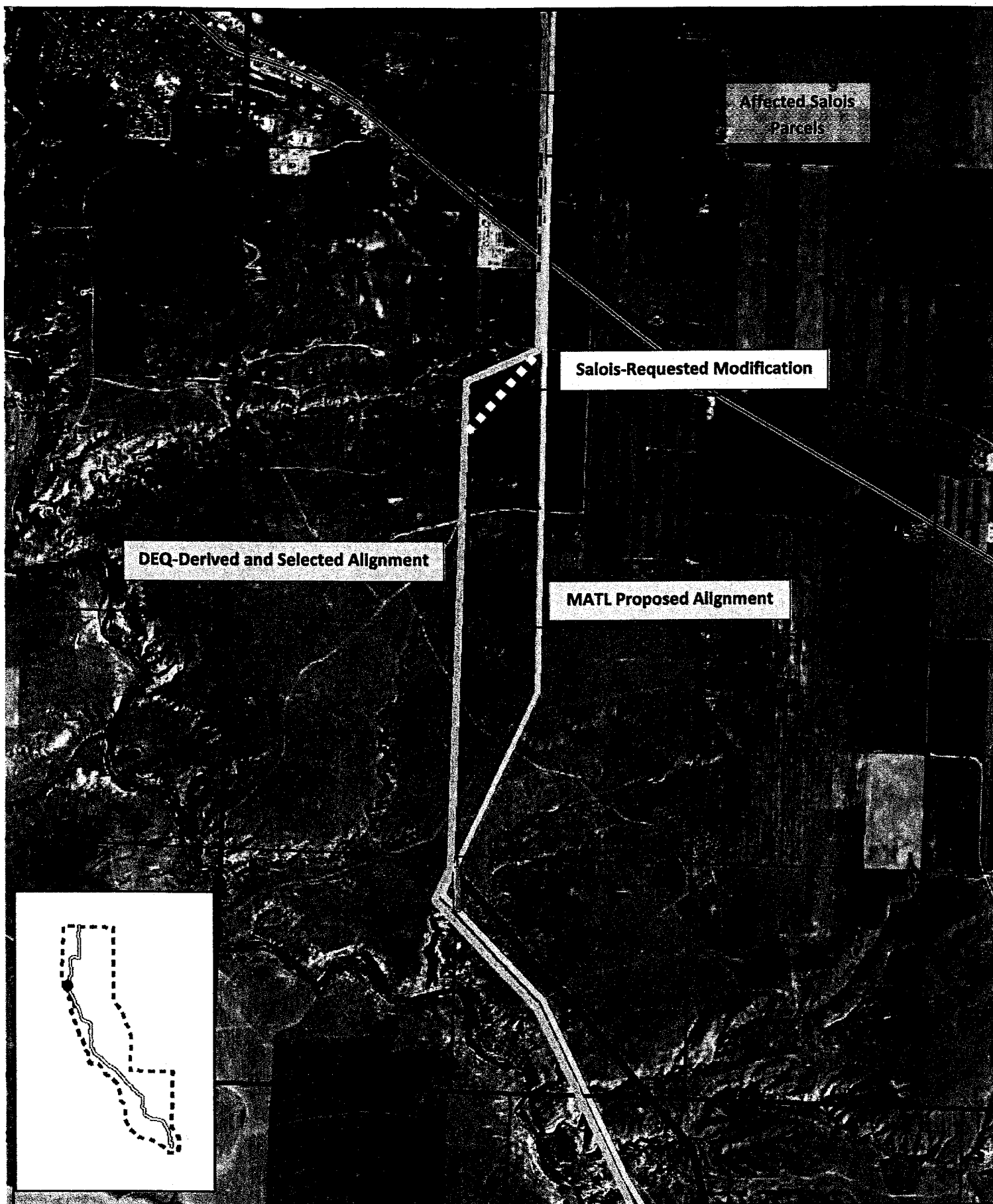
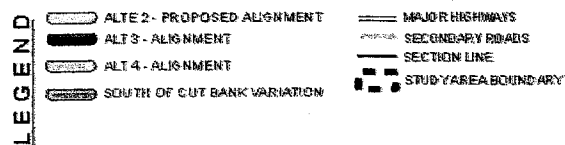


FIGURE 2.6-9
LOCAL ROUTING OPTION AND VARIATION
SOUTH OF CUT BANK



Part 1

General and Substantive Provisions

70-30-101. Eminent domain defined. Eminent domain is the right of the state to take private property for public use. This right may be exercised in the manner provided in this chapter.

History: En. Sec. 579, p. 189, L. 1877; re-en. Sec. 579, 1st Div. Rev. Stat. 1879; re-en. Sec. 597, 1st Div. Comp. Stat. 1887; amd. Sec. 2210, C. Civ. Proc. 1895; re-en. Sec. 7330, Rev. C. 1907; re-en. Sec. 9933, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1237; re-en. Sec. 9933, R.C.M. 1935; R.C.M. 1947, 93-9901.

70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:

- (1) all public uses authorized by the government of the United States;
- (2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;
- (3) public buildings and grounds for the use of any county, city, town, or school district;
- (4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;
- (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;
- (6) water and water supply systems as provided in Title 7, chapter 13, part 44;
- (7) roads, streets, alleys, controlled-access facilities, and other publicly owned buildings and facilities for the benefit of a county, city, or town or the inhabitants of a county, city, or town;
- (8) acquisition of road-building material as provided in 7-14-2123;
- (9) stock lanes as provided in 7-14-2621;
- (10) parking areas as provided in 7-14-4501 and 7-14-4622;
- (11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and 11;
- (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43, except that private property may be acquired for urban renewal through eminent domain only if the property is determined to be a blighted area, as defined in 7-15-4206(2)(a), (2)(h), (2)(k), or (2)(n), and may not be acquired for urban renewal through eminent domain if the purpose of the project is to increase government tax revenue;
- (13) housing authority purposes as provided in Title 7, chapter 15, part 44;
- (14) county recreational and cultural purposes as provided in 7-16-2105;
- (15) city or town athletic fields and civic stadiums as provided in 7-16-4106;
- (16) county cemetery purposes pursuant to 7-11-1021, cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;
- (17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);
- (18) public assistance purposes as provided in 53-2-201;
- (19) highway purposes as provided in 60-4-103 and 60-4-104;
- (20) common carrier pipelines as provided in 69-13-104;
- (21) water supply, water transportation, and water treatment systems as provided in 75-6-313;
- (22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;
- (23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;
- (24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;
- (25) water conservation and flood control projects as provided in 76-5-1108;
- (26) acquisition of natural areas as provided in 76-12-108;
- (27) acquisition of water rights for the natural flow of water as provided in 85-1-204;
- (28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;
- (29) conservancy district purposes as provided in 85-9-410;

(30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;

(31) canals, ditches, flumes, aqueducts, and pipes for:

- (a) supplying mines, mills, and smelters for the reduction of ores;
- (b) supplying farming neighborhoods with water and drainage;
- (c) reclaiming lands; and
- (d) floating logs and lumber on streams that are not navigable;

(32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;

(34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

(35) an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(36) private roads leading from highways to residences or farms;

(37) **telephone or electrical energy lines, except that local government entities as defined in 2-7-501, municipal utilities, or competitive electricity suppliers may not use this chapter to acquire existing telephone or electrical energy lines and appurtenant facilities owned by a public utility or cooperative for the purpose of transmitting or distributing electricity or providing telecommunications services;**

(38) telegraph lines;

(39) sewerage of any:

(a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;

(b) settlement consisting of not less than 10 families; or

(c) public buildings belonging to the state or to any college or university;

(40) tramway lines;

(41) logging railways;

(42) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

(43) underground reservoirs suitable for storage of natural gas;

(44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

(45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse effects of strip or underground mining on those lands.

History: En. Sec. 580, p. 189, L. 1877; re-en. Sec. 580, 1st Div. Rev. Stat. 1879; re-en. Sec. 598, 1st Div. Comp. Stat. 1887; amd. Sec. 2211, C. Civ. Proc. 1895; amd. Sec. 1, p. 135, L. 1899; amd. Sec. 1, Ch. 4, L. 1907; Sec. 7331, Rev. C. 1907; re-en. Sec. 9934, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1238; re-en. Sec. 9934, R.C.M. 1935; amd. Sec. 1, Ch. 245, L. 1953; amd. Sec. 6, Ch. 259, L. 1955; amd. Sec. 1, Ch. 216, L. 1961; amd. Sec. 1, Ch. 311, L. 1973; amd. Sec. 1, Ch. 375, L. 1974; R.C.M. 1947, 93-9902; amd. Sec. 18, Ch. 550, L. 1979; amd. Sec. 52, Ch. 125, L. 2001; amd. Sec. 4, Ch. 451, L. 2003; amd. Sec. 28, Ch. 300, L. 2005; amd. Sec. 1, Ch. 193, L. 2007; amd. Sec. 2, Ch. 512, L. 2007; amd. Sec. 38, Ch. 286, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 286 in (16) near beginning after "purposes" substituted "pursuant to 7-11-1021" for "as provided in 7-35-2201". Amendment effective July 1, 2009.

Cross-References

City or Town Council — water supply and regulation, Title 7, ch. 13, part 44.

Acquisition of land for ferry, 7-14-2829.

(30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;

(31) canals, ditches, flumes, aqueducts, and pipes for:

(a) supplying mines, mills, and smelters for the reduction of ores;

(b) supplying farming neighborhoods with water and drainage;

(c) reclaiming lands; and

(d) floating logs and lumber on streams that are not navigable;

(32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;

(34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

(35) an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(36) private roads leading from highways to residences or farms;

(37) ~~telephone or electrical energy lines, except that local government entities as defined in 2-7-501, municipal utilities, or competitive electricity suppliers may not use this chapter to acquire existing telephone or electrical energy lines and appurtenant facilities owned by a public utility or cooperative for the purpose of transmitting or distributing electricity or providing telecommunications services;~~

(38) telegraph lines;

(39) sewerage of any:

(a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;

(b) settlement consisting of not less than 10 families; or

(c) public buildings belonging to the state or to any college or university;

(40) tramway lines;

(41) logging railways;

(42) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

(43) underground reservoirs suitable for storage of natural gas;

(44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

(45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse effects of strip or underground mining on those lands.

History: En. Sec. 580, p. 189, L. 1877; re-en. Sec. 580, 1st Div. Rev. Stat. 1879; re-en. Sec. 598, 1st Div. Comp. Stat. 1887; amd. Sec. 2211, C. Civ. Proc. 1895; amd. Sec. 1, p. 135, L. 1899; amd. Sec. 1, Ch. 4, L. 1907; Sec. 7331, Rev. C. 1907; re-en. Sec. 9934, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1238; re-en. Sec. 9934, R.C.M. 1935; amd. Sec. 1, Ch. 245, L. 1953; amd. Sec. 6, Ch. 259, L. 1955; amd. Sec. 1, Ch. 216, L. 1961; amd. Sec. 1, Ch. 311, L. 1973; amd. Sec. 1, Ch. 375, L. 1974; R.C.M. 1947, 93-9902; amd. Sec. 18, Ch. 550, L. 1979; amd. Sec. 52, Ch. 125, L. 2001; amd. Sec. 4, Ch. 451, L. 2003; amd. Sec. 28, Ch. 300, L. 2005; amd. Sec. 1, Ch. 193, L. 2007; amd. Sec. 2, Ch. 512, L. 2007; amd. Sec. 38, Ch. 286, L. 2009.

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Cross-References

City or Town Council — water supply and regulation, Title 7, ch. 13, part 44.

Acquisition of land for ferry, 7-14-2829.

**Revised
Codes of Montana
1907**

7328. (§ 2195.) *Hearing of application.*—After the time of publication has expired, the court or judge may, upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application, and if all the statements made therein are shown to be true, must declare the corporation dissolved.

7329. (§ 2196.) *Judgment roll and appeals.*—The application, notices, proof of publication, objections (if there be any) and declaration of dissolution, constitute the judgment roll; and from the judgment an appeal may be taken, as from other judgments of the district court.

TITLE VII.

EMINENT DOMAIN.

- Section 7330. *Eminent domain defined.*
 “ 7331. *What are public uses.*
 “ 7332. *What estates in land may be acquired by condemnation.*
 “ 7333. *Private property defined. Classes enumerated.*
 “ 7334. *Facts necessary to be found before condemnation.*
 “ 7335. *Parties may make location. May enter to make surveys.*
 “ 7336. *Jurisdiction in district court.*
 “ 7337. *The complaint and its contents.*
 “ 7338. *Summons, what to contain. How issued and served.*
 “ 7339. *Who may defend.*
 “ 7340. *Power of court to appoint commissioners, etc.*
 “ 7341. *Meeting of commissioners.*
 “ 7342. *The date with respect to which compensation shall be assessed, and the measure thereof.*
 “ 7343. *Report of commissioners.*
 “ 7344. *Appeal.*
 “ 7345. *New proceedings to cure defective title.*
 “ 7346. *Payment of damages.*
 “ 7347. *To whom paid.*
 “ 7348. *Final order of condemnation, what to contain; when filed, title vests.*
 “ 7349. *Putting plaintiff in possession.*
 “ 7350. *Payment of costs.*
 “ 7351. *Rules of practice.*
 “ 7352. *Private roads.*
 “ 7353. *Exceptions.*
 “ 7354. *Temporary logging roads.*
 “ 7355. *Damages to be paid before land can be used.*

7330. (§ 2210.) *Eminent domain defined.*—Eminent domain is the right of the state to take private property for public use. This right may be exercised in the manner provided in this Title.

State v. Court, 29 Mont. 153; 74 Pac. 200. After filing a complaint in the proper county, plaintiff could not change the place of trial at his own instance to another county, by a recital in the sum-

mons that the hearing would be had there, and the order made therefor was without jurisdiction.

Marin County W. Co. v. Marin Co., 145 Cal. 587; 79 Pac. 282.

7331. *What are public uses.*—Subject to the provisions of this Title, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the Government of the United States.
2. Public buildings and grounds for the use of the State, and all other public uses authorized by the Legislative Assembly of the State.
3. Public buildings and grounds for the use of any county, city or town, or school district; canals, aqueducts, flumes, ditches, or pipes conducting water, heat or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets and alleys, and all other public uses for the benefit of any county, city or town, or the inhabitants thereof, which may be authorized by the Legislative Assembly; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized.
4. Wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turn-pike roads, railroads, canals, ditches, flumes, aqueducts and pipes for public transportation, supplying mines, mills and smelters for the reduction of ores and farming neighborhoods with water, and drainage and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs, necessary for collecting and storing water.
5. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines, mills or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines, mills and smelters for the reduction of ores; also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposits or conduct of tailings or refuse matter from their several mines, mills or smelters for reduction of ores, and sites for reservoirs necessary for collecting and storing water.
6. Private roads leading from highways to residences or farms.
7. Telephone or electric light lines.
8. Telegraph lines.

9. Sewerage of any city, county or town, or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state or to any college or university.

10. Tramway lines.

11. Electric power lines.

12. Logging railways.

13. Temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads or highways; for such time as the court or judge may determine, *Provided* the grounds of State Institutions be excepted. [Act approved February 5, 1907.] (10th Sess. Chap. 4.)

State v. Court, 34 Mont. 541; 88 Pac. 46. Helena P. Co. v. Spratt, 35 Mont. 125; 88 Pac. 775.

7332. (§ 2212.) *What estates in land may be acquired by condemnation.*—The following is a classification of the estate and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds or for permanent buildings, for reservoirs and dams, and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine.

2. An easement, when taken for any other use.

3. The right of entry upon and occupation of lands, and the right to take therefrom such earth, gravel, stones, trees and timber as may be necessary for some public use.

Los Angeles v. Pomeroy, 124 Cal. 615; 57 Pac. 585.

7333. (§ 2213.) *Private property defined. Classes enumerated.*—The private property which may be taken under this Title, includes:

1. All real property belonging to any person.

2. Lands belonging to this state, or to any county, city or town, not appropriated to some public use.

3. Property appropriated to public use; but such property must not be taken unless for a more necessary public use than that to which it has already been appropriated.

4. Franchises for roads, bridges and ferries, and all other franchises; but such franchises must not be taken unless for free highways, free bridges, railroads or other more necessary public use.

5. All rights of way for any and all the purposes mentioned in Section 7331 (2211), and any and all structure and improvements thereon, and the lands held and used in connection therewith must be subject to be connected with, crossed, or intersected by any other right of way or improvements or structures thereon. They must also be subject to a limited use, in common with

9. Sewerage of any city, county or town, or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state or to any college or university.

10. Tramway lines.

11. **Electric power lines.**

12. Logging railways.

13. Temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads or highways; for such time as the court or judge may determine, *Provided* the grounds of State Institutions be excepted. [Act approved February 5, 1907.] (10th Sess. Chap. 4.)

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1. All real property belonging to any person.

2. Lands belonging to this state, or to any county, city or town, not appropriated to some public use.

3. Property appropriated to public use; but such property must not be taken unless for a more necessary public use than that to which it has already been appropriated.

4. Franchises for roads, bridges and ferries, and all other franchises; but such franchises must not be taken unless for free highways, free bridges, railroads or other more necessary public use.

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